IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8762 OF 2004

Janata Shikshan Pracharak Samitee
and others Petitioners

versus

State of Maharashtra & others Respondents

C.K.Thomos i/by M/s.C.K.Thomas & Associates, adv. for petitioners.
P.M.Patil, AGP for respondents 1 and 2.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.
DATE : 9th December 2004

PC :

1. Heard advocates.

2. The first petitioner is a minority educational institution and is running a D.Ed. college at Thane. The said D.Ed. College is impleaded as petitioner no.2. By this petition the petitioners are seeking a direction to permit the petitioners to fill up 50% of the seats for D.Ed. course from out of students belonging to minority community according to merits and balance 50% seats from the open category students according to merits for the academic year 2004-2005. The petitioners are also seeking a direction to restrain the respondents from

foisting any list of students on their college pursuant to centralized admission policy of the 2nd respondent for D.Ed. admissions for the academic year 2004-2005.

In T.M.A.Pai Foundation's case while answering the question whether the admission of students of minority education institutions, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated, the Supreme Court held as follows :-

> "A.Admission of students to unaided minority educational institutions viz. schools and undergraduate colleges where the scope for merit based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.
>
> The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Art. 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of the right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.
>
> A minority institution does not cease to

> be so, the moment grant-in-aid is recevied by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non minority students, so that the rights under Art.30(1) are not substantially impaired and further the citizens rights under Art.29(2) are not infringed. what would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non minority students who are eligible to seek admission for the remaining seats, admission should normally, be on the basis of the common entrance test held by the State agency followed by counselling wherever it exists."

3. The decision in T.M.A.Pai Foundation’s case was further explained by the Constitution Bench in Writ Petition (Civil) No.350 of 1993 (Islamic Academy of Foundation and another Vs. State of Karnataka and others). The Court held that the majority judgement in making a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges recognises that it is in

national interest to have good and efficient professionals. The judgement provides that national interest would prevail, even over minority rights. It is for this reason that in professional colleges, both, minority and non-minority, merit has been made the criterion for admission. Paras 59 and 68 of Pai majority judgement show that in non-minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests, conducted by government agencies. However, a proper reading of paragraph 68 of that judgement, indicates that a further distinction has been made between minority and non minority professional colleges. It is provided that in cases of non minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on the basis of counselling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. This aspect of local needs comes into consideration while issuing essentiality certificate before setting up of a medical

college. It may be noted that the same yardstick cannot be applied to both minority and non minority professional colleges in fixing the percentage of seats and so para 68 provides that a different percentage can be prescribed for unaided minority institutions. The expression "different percentage for minority professional institutions" carries a different meaning than the expression "certain percentage for unaided professional college". In fixing the percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-a-vis the local needs. It was clarified that minority professional colleges can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter se merit among those very students of that community/language cannot be ignored. But, if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test

conducted by government agencies.

4. In view of the law laid down in T.M.A. Pai Foundation case (supra) and subsequent decision in Islamic Academy of Foundation (supra), the petitioner is justified in contending that minority institution is entitled to fill up the seats in minority quota as fixed by the State Government from amongst the minority students according to inter se merits. The State is directed to fix the quota for the minority students in D.Ed. colleges in the State for the next academic year and the management shall be entitled to fill up this quota from out of the minority students according to merit. As far as balance seats are concerned, the management will have to fill up the seats from out of the students who have passed common entrance test (CET) conducted by the State agencies according to merit. We hasten to add that the State can also make a provision for reservation for backward/weaker section of the society in unaided minority institutions against non minority quota (See decision of Division Bench in Association of Managements of Unaided P.M. and ors Vs. State of Maharashtra & others - Writ Petition No.3061 of 2003 and a batch decided on 23rd August 2003).

5. Petition is accordingly disposed of.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)